



LARGE AND MID-SIZE
BUSINESS DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ALL LMSB INDUSTRY DIRECTORS
DIRECTOR, FIELD SPECIALISTS
LMSB HEADQUARTERS DIRECTORS

FROM: Robert L. Trujillo /s/ *Robert L. Trujillo*
Director, Planning, Quality, Analysis and Support

SUBJECT: LMSB Procedures for Tax Return Preparer Penalty Cases

This memorandum introduces the LMSB Procedures for Tax Return Preparer Penalty Cases. These procedures were developed based on feedback from the Industries, Pre-Filing and Technical Guidance, and the Ogden Compliance Services organizations.

The Small Business and Work Opportunity Tax Act of 2007 broadened the definition of a tax return preparer to include any person that has prepared a substantial portion of any tax return or claim for refund. This law change will greatly expand the number of practitioners subject to return preparer penalty consideration.

Examiner Responsibility for Return Preparer Behavior

The purpose of asserting penalties on return preparers is to increase compliance. When examining a return prepared by a tax return preparer, it is an examiner's responsibility to ensure that the identification and conduct provisions of the Code were followed. If the provisions are not followed, and the preparer can not show reasonable cause, it is the examiner's responsibility to assert the penalties. During every field examination, examiners should determine if return preparer violations exist. This determination will be made based on oral testimony and/or written evidence during the examination process.

Establishing and Working a Preparer Case

When facts and circumstances in the examination give rise to the development of a penalty issue, the examiner must secure the team manager's approval to begin the return preparer examination. Once approved, these cases are established on ERCS. They are not controlled on AIMS. See attachment for the detailed LMSB procedures for return preparer penalty examinations. Examiners can also visit the LMSB Return Preparer webpage <http://lmsb.irs.gov/hq/pqa/Post-filing/preparers.asp>

Examiners should always contact the LMSB Return Preparer Coordinator (RPC) at the start of the preparer penalty examination. The RPC can advise the examiner if the return preparer is being investigated by Criminal Investigation. Because of their knowledge of past and present return preparer penalty examinations, the RPC can provide invaluable assistance to the examiner at the start of their investigation regarding general questions, audit techniques, and case direction. In addition, the RPC can provide coordination if more than one investigation is ongoing or is contemplated.

If a preparer's misconduct appears to be pervasive and widespread, consideration will be given to opening a Program Action Case (PAC). PACs are preparer investigations where clients of questionable preparers are examined to determine whether preparer penalties and/or injunctive actions against the preparers are warranted. Examiners must work with their manager and the RPC to receive approval to open a PAC. The LMSB procedures for conducting a PAC are contained in the [Memorandum from the Director, PQAS dated January 14, 2008](#).

If you have any questions or need additional information, please contact Senior Program Analyst/RPC Ardell Mueller at 847-303-7830.

Attachments (1)

[LMSB Procedures for Tax Return Preparer Penalty Cases](#)